

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 10, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP977-FT

Cir. Ct. No. 2013ME593

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN THE MATTER OF THE MENTAL COMMITMENT AND ORDER FOR
INVOLUNTARY MEDICATION AND TREATMENT OF WILLIAM A. M.:**

WINNEBAGO COUNTY,

PETITIONER-RESPONDENT,

V.

WILLIAM A. M.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Winnebago County:
SCOTT C. WOLDT, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.¹ William A. M. appeals from an order for commitment and an order for involuntary medication and treatment. William argues that there was insufficient evidence to find him dangerous to himself or others.² We disagree and affirm the circuit court.

BACKGROUND

¶2 At the final hearing for an involuntary mental commitment, two witnesses, Officer Luke Luther and Dr. Jagdish Dave, testified. On October 23, 2013, Luther responded to a call from a barbershop owner who reported that a man, William, walked into the shop, talked incoherently, and then left. Luther had received prior information from dispatch that this man was “not on his medication and that he was very anti-law enforcement.” By the time Luther got to the barbershop, William had left and gone to a neighboring pharmacy. Luther looked for William at the pharmacy, a local church, and William’s residence. Luther located William at a cheese store after dispatch had notified Luther that William was there, “causing a disturbance.” Luther noted in his testimony that “the bridge is right there,” near the cheese store.

¶3 Luther located William on East Main Street, which is State Highway 21, parked his squad car in traffic, stepped out, and asked William if he could talk to him. Luther testified: “He had looked at me with like a thousand-yard stare and kept walking very quickly away from me. I had asked him again to

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² Although William’s notice of appeal indicates that he is appealing both the order for commitment and the order for involuntary medication and treatment, the arguments in his briefs are focused entirely on the involuntary commitment order.

stop and relax and talk to me, and he had refused to stop.” When William attempted to step out into the road in the middle of the block, Luther grabbed his arm to stop him. William resisted, and Luther and another officer put William in handcuffs and put him under emergency detention. Luther testified that one of the reasons why they decided to detain him rather than arrest him was because Luther had been briefed before his shift that William had “stopped at a day care and attempted to see the children there and ... we had dealt with him with a similar matter the night before.” Luther testified that, upon detention, William “was just very upset, yelling profanities, saying that we were trying to poison him.” Luther noted that he “had a previous general good rapport with Mr. M. and ... I could not get through to him at all.”

¶4 Dave was appointed by the court to examine William to determine his mental condition and provide a report of the examination to the court. Dave diagnosed William with schizoaffective disorder, bipolar type, characterized by disorder of thought, mood, and perception. The disorders substantially impaired William’s ability to recognize reality, the ability to meet the ordinary demands of life, and behavior. Dave opined that William was substantially incapable of applying an understanding of the advantages, disadvantages, and alternatives to his illness in order to make an informed choice about taking medication and that medication would have a therapeutic value.

¶5 At the final hearing, Dave read William’s self-report from his examination report:

I was right in the center of the road, and they grabbed me on my arm. There were three police officers who tried to overpower me. I believe they wanted to kill me. I was trying to be friendly with them. They were strong enough to overpower me. They told me that I would be killed by the oncoming traffic on the main road. However, I told

them that my life is in the hand of the super power and nothing can happen to me.

Dave testified that, from William's report, he concluded:

He recently told me that he was in the middle of the road, the police officer needed to pull him out from the traffic, and he was kind of odd about what had happened, he would have been killed, and he said that everything is in the hand of the Lord; so he was kind of delusional, and he was acting on his delusions.

¶6 The circuit court found that William was dangerous to himself and others, noting that he had attempted to walk into a stretch of road where there was traffic "almost continuously" without being aware of his surroundings and that "when he's wandering around he can cause a car accident and injure others too."

¶7 William challenges the finding of dangerousness, arguing that the County did not present sufficient evidence to show that William was dangerous to himself or others.

ANALYSIS

¶8 Our standard of review of the circuit court's decision on commitment and involuntary medication and treatment is twofold. The circuit court's findings of fact will be upheld unless clearly erroneous, but whether those facts meet the statutory requirements is a question of law we review de novo. *K.N.K. v. Buhler*, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987).

¶9 To involuntarily commit an individual for treatment, the county must prove by clear and convincing evidence that the individual is mentally ill, is a proper subject for treatment, and is dangerous. WIS. STAT. § 51.20(1)(a), (13)(e). William does not contest the first two prongs; he argues that the County did not

prove dangerousness. There are five standards under which the county may show dangerousness. Sec. 51.20(1)(a)2.a.-e.

¶10 The court's order does not specify which standard for dangerousness applied to William. William addresses subparagraphs a. through c., "because those standards are the most applicable based on the court's dangerousness finding." The County states that its "contention at both the probable cause hearing and at the final hearing was that William M. was dangerous by meeting the criteria of [WIS. STAT.] § 51.20(1)(a)2.c." We have not found, in the record, any specific indication of which standard the County sought to prove or which standard the circuit court found. However, we do observe that the circuit court's oral ruling suggests that the circuit court was making its finding of dangerousness based on subparagraph c. We agree with the circuit court that the County proved William to be dangerous under subparagraph c. and affirm.

¶11 To prove dangerousness under the third standard for dangerousness, WIS. STAT. § 51.20(1)(a)2.c., the County must show that the individual "[e]vidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself."

¶12 William argues that the record does not support a finding of dangerousness. William indicates that his attempt to cross the street "was an isolated incident and therefore does not demonstrate a pattern." Even given his visits to businesses and speaking incoherently, this is not enough to show a

substantial probability of physical injury to himself.³ The County responds that William's visits to local businesses, speaking incoherently, and attempting to walk out into the road showed a pattern of recent acts that evidenced impaired judgment, thus exhibiting dangerousness.

¶13 William's acts evidence such impaired judgment that there is a substantial probability of physical impairment or injury to himself. Multiple incidents of incoherent and disruptive behavior were reported over two days. Luther testified that he was unable to get through to William, who gave him a "thousand-yard stare." William ignored Luther's requests to stop and walked quickly into Highway 21 in the middle of the block. After Luther grabbed William's arm, William resisted the officer's attempt to keep him out of the road until officers were able to handcuff him. William reported to Dave that he believed the officers were attempting to kill him and that, despite the fact that he was in the road, nothing could happen to him because his life was in the hand of the super power.⁴ These acts evidence incoherence, impaired judgment, and lack of orientation to the dangers of the highway, along with resistance to efforts to

³ William argues that the County did not make its showing under subparagraph c. because there was no evidence of a "substantial probability of physical impairment or injury to William or others, pursuant to [WIS. STAT.] § 51.20(1)(a)2.c." This subparagraph of § 51.20 requires a showing of "a substantial probability of physical impairment or injury to himself or herself." The 2011-12 version of the statute, applicable here, did not mention injury to others. *See* 2013 Wis. Act 158, § 11 (eff. Mar. 29, 2014, and adding phrase "or other individuals" to § 51.20(1)(a)2.c.).

⁴ The parties dispute where exactly William was when he stepped toward or into the road and was stopped by Luther. They point to arguably contradictory testimony regarding how much traffic there was at the time. William's exact location with respect to the highway and the traffic situation at the precise moment he attempted to step out into the road are not dispositive. The circuit court found that William's attempt to step out onto Highway 21 at the time of day at which this incident occurred was a result of his illness and that he "wasn't aware of his surroundings" and that "that would be dangerous." We cannot say that this was an erroneous finding.

take protective measures. The pattern of disoriented behavior culminated in a roadway incident and encounter with police that involved resistance, which put both William and others at substantial probability of harm. We affirm.

By the Court.—Orders affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

